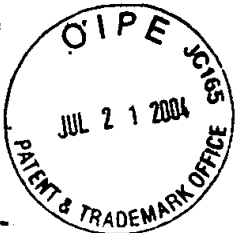


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Chen)
Serial No.: 09/803,289) Confirmation No. 7132
Filing Date: March 9, 2001)
Examiner: O. Escalante)
Art Unit: 2645)
Attorney Docket: P12595-US1 (011317-58))
Title: METHOD AND APPARATUS FOR)
MAINTAINING TRAFFIC CAPACITY IN)
A WIRELESS COMMUNICATION SYSTEM)
INCLUDING AUTOMATIC FREQUENCY)
ALLOCATION (AFA))

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JUL 26 2004
Technology Center 2600

Commissioner of Patents
Post Office Box 1450
Alexandria, VA 22313-1450

RESPONSE UNDER 37 C.F.R. § 1.111

Sir:

This paper is being filed in response the Office Action dated February 25, 2004, having a reply due date of May 25, 2004. No amendments have been made herein. The Applicant hereby petitions the Commissioner of Patents to extend the time for response by two (2) months to July 25, 2004. The appropriate fee for the Petition for Extension of Time is enclosed. Applicant requests reconsideration of the application in view of the remarks and accompanying declaration. If Applicant has miscalculated the fee, you are authorized to charge any additional fees to deposit account 13-4365.

The Examiner, in the above-cited office action, has rejected all of Applicant's claims as obvious under 35 U.S.C. § 103(a). The Examiner has rejected the claims in view of U.S. Patent 5,898,928 to Karlsson in combination with published PCT application WO 00/74415, on which Wallstedt is listed as an inventor.

It is axiomatic that for a claim to be obvious, each limitation in the rejected claim must be taught or suggested by the prior art. *See Hybritech, Inc. v. Monoclonal Antibodies*, 231 U.S.P.Q. 81 (Fed. Cir. 1986). Referring to just the independent claims, the Examiner has stated in the Office Action with respect to claims 1, 5, and 6, that "Karlsson does not

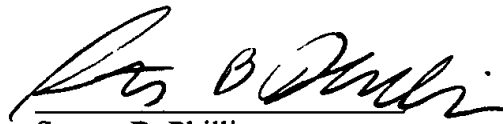
specifically teach that each removed frequency has a penalty time and wherein the selection includes selecting a frequency with the shortest penalty time." The Examiner goes on to find this teaching in Wallstedt. With respect to claim 14, the Examiner relies on Wallstedt as teaching all the limitations of claim 14 except for "reallocating the frequencies based on traffic capacity." Applicant does not necessarily agree with the Examiner's characterization of the teachings found and not found in Karlsson and Wallstedt. However, Applicant submits that the enclosed Declaration under 37 C.F.R. § 1.131 renders these rejections moot, since the declaration shows that Wallstedt does not qualify as prior art to the present application. Thus, claims 1, 5, 6, and 14 are patentable because Karlsson alone does not disclose each limitation in any of these claims. Since every dependent claim in the application depends from one of the above-mentioned claims, all the dependent claims in the application are patentable for at least the same reason that claims 1, 5, 6, and 14 are patentable.

Applicant believes he has responded to all of the concerns raised by the Examiner. Reconsideration and allowance of this application is hereby requested.

Respectfully submitted,

Date: July 21, 2004

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